

Bond Case Briefs

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EMINENT DOMAIN - FLORIDA

Lemon Bay Cove, LLC v. United States

United States Court of Federal Claims - July 15, 2022 - Fed.Cl. - 2022 WL 2793949

Owner of wetlands comprised of submerged land and mangroves filed suit against United States, claiming that Army Corps of Engineers effected taking by denying owner Clean Water Act (CWA) permit to fill property in order to build 12-unit residential development on property.

Bench trial was held.

The Court of Federal Claims held that:

- Corps' denial of permit did not effect categorical taking, and
- Corps' denial of permit did not effect regulatory taking under *Penn Central*.

Army Corps of Engineers' denial of Clean Water Act (CWA) permit to fill 2.08 acres and to build 12-unit residential project on owner's wetlands comprised of submerged land and mangroves did not constitute categorical taking requiring just compensation, under Fifth Amendment; Corps' denial of permit did not deprive property of all economic value, as owner's persistence in pursuing development of 12-unit footprint for its own financial reasons, rather than considering smaller footprint, prevented Corps' consideration of any other economically viable uses of property.

Owner of wetlands comprised of submerged land and mangroves lacked reasonable investment-backed expectations sufficient to satisfy *Penn Central* regulatory taking requirements, based on Army Corps of Engineers' denial of Clean Water Act (CWA) permit for owner to fill 2.08 acres of property and build 12-unit residential project, where owner was aware at time of purchase that Corps' requirement of obtaining permit was longstanding regulatory restraint impacting potential development of owner's property.